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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 MARC J. FAGEL (Cal. Bar No. 154425)
JOHN S. YUN (Cal. Bar No. 112260)
2 (yunj@sec.gov)
KRISTIN A. SNYDER (Cal. Bar No. 187175)
3 (snyderk@sec.gov)

4 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
5 44 Montgomery Street, Suite 2600
San Francisco, California 94104
6 Telephone: (415) 705-2500
Facsimile: (415) 705-2501

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

EDL

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14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 vs.
17 JOHN EARL BRAKE,
18 Defendant.

CV 08 4089
Case No. 08 4089

COMPLAINT
DEMAND FOR JURY TRIAL

19
20 Plaintiff Securities and Exchange Commission ("Commission") alleges:

21 **SUMMARY OF THE ACTION**

22 1. This lawsuit involves fraudulent offerings of securities in the form of promissory notes
23 by defendant John Earl Brake ("Brake") from at least 1999 through 2005. During that time period,
24 Brake defrauded investors by misappropriating investor funds for his own use and falsely
25 representing that one to two year promissory note investments offered by his company, Pinnacle
26 West, LLC, were secured by real estate the company owned. In reality, Pinnacle never owned any
27 property, holding at best options to purchase or uncompleted purchase contracts. In addition,
28 Pinnacle never completed a real estate project. As a result of Brake's false statements, investors.

1 purchased roughly \$20 million in Pinnacle promissory notes from 1999 through 2005. Investors have
2 lost millions of dollars of the money invested with Pinnacle.

3 2. Brake also treated investor money as if it was his own, using Pinnacle's bank account
4 as a slush fund for himself. He used millions of dollars of investor funds to pay for a myriad of
5 improper, unauthorized personal expenses including cars, an expensive beachfront rental home in
6 Carmel, private jet travel, jewelry, a chauffeur, and lavish shopping sprees.

7 3. As a result of Brake's actions, he violated the federal securities laws, including the
8 antifraud statutes, by misappropriating investor funds and making materially false and misleading
9 statements in connection with the purchase or sale of securities. The Commission seeks to enjoin
10 Brake permanently from further conduct that violates the securities laws, seeks disgorgement of
11 Brake's ill-gotten gains and payment of civil money penalties.

12 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

13 4. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
14 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)], and Sections 21(d) and
15 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)].
16 This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities
17 Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)], and Sections 21(d)(3), 21(e), and 27 of the Exchange Act
18 [15 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa].

19 5. Venue in this district is proper pursuant to Section 22(a) of the Securities Act
20 [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because a substantial
21 portion of the conduct alleged in this complaint occurred within the Northern District of California
22 and defendant Brake resided, and conducted business, in the district for a portion of the relevant time
23 period.

24 6. Assignment to the San Francisco Division of this Court is proper because a substantial
25 part of the events or omissions that give rise to claims alleged in this Complaint occurred in San
26 Mateo County. In addition, some of the defrauded investors reside in this division.
27
28

1 **DEFENDANT**

2 7. Defendant John Earl Brake ("Brake"), age 56, previously resided in Carmel,
3 California, and resides currently in Santa Monica, California. Brake is the sole shareholder of
4 Pinnacle West LLC ("Pinnacle"), a private California company formed in 1998 that purports to
5 develop large real estate projects. During the Commission staff's investigation, Brake testified for
6 less than one day, but agreed to return for follow-up testimony. Brake subsequently indicated,
7 however, that he would assert his Fifth Amendment right against self-incrimination if he appeared for
8 follow-up testimony.

9 8. During all relevant times, Brake held at least a 98% ownership interest in Pinnacle.
10 Brake marketed Pinnacle to investors as a company that developed large scale real estate projects,
11 including a project in Big Sur, California and a project in Morgan Hill, California. Pinnacle,
12 however, never successfully completed or owned any projects. While Pinnacle still exists as an
13 entity, it does not appear to own any assets.

14 **FACTUAL ALLEGATIONS**

15 **A. Background of Brake's Issuance of the Pinnacle Promissory Note Investments**

16 9. When Brake formed Pinnacle in 1998, it had minimal operating capital and required
17 financing to acquire and develop its proposed real estate projects. Brake sought help with fundraising
18 from, among others, Mark J. P. Boucher, an investment adviser based in Portola Valley, California.
19 Brake made various promises to compensate Boucher for any investor funds he supplied to Brake.
20 From 1999 through 2005, Boucher's clients supplied the bulk of the roughly \$20 million raised in the
21 Pinnacle offering, and Boucher advertised the notes to clients in his monthly subscription based
22 newsletter. Although investors in the Pinnacle notes are scattered throughout the United States, some
23 are based in counties within this division, including San Mateo and Alameda.

24 10. Investors in Pinnacle received promissory notes, signed by Brake, that promised to
25 pay interest ranging from 12% to 20% per annum. The notes generally promised full repayment after
26 a period ranging from twelve to twenty-four months, although they typically contained a rollover
27 provision that allowed for additional extensions of time on repayment.

1 11. Investors were told that they would be repaid with interest when Pinnacle secured
2 longer-term financing for its projects, or from the profits generated by the sale of the projects upon
3 completion. None of the proposed Pinnacle projects was ever completed. To the extent that any
4 investors received partial or full repayment of their investments, they were paid using funds supplied
5 by new investors.

6 12. The promissory notes for the Pinnacle projects are securities. The notes were raised
7 for a business purpose, i.e. to make loans for the development of large scale real estate projects.
8 From roughly 1999 through at least 2004, the notes were offered to numerous investors throughout
9 the country through telephone solicitations or in advertisements in Boucher's monthly subscription
10 newsletter. The notes were marketed as investments to potential investors, including offering 18-
11 20% annual interest. Moreover, no other regulatory scheme is in place to regulate the notes, other
12 than the protections provided by the securities laws.

13 **B. Brake Misled Investors About the Security And Collateral for the Pinnacle Notes**

14 13. Throughout the period of the offering from 1999 through 2005, Brake made
15 misrepresentations to investors, and failed to tell them material information, about the security for
16 their investments in Pinnacle to induce them to invest in the Pinnacle notes. Specifically, Brake
17 signed promissory notes on Pinnacle's behalf that falsely stated that investors were receiving
18 "collateral" for their investments. For example, during at least the time period 1999 through January
19 2005, Pinnacle notes issued to investors describe various specific properties as security for the
20 investors' investments, and state that the "following properties referred to herein are to be used as
21 security and collateral for enforcing collection of this note should default occur." The notes were
22 then provided to investors through a variety of means, including the mails, facsimile, and in-person
23 delivery.

24 14. In reality, however, the Pinnacle notes were unsecured investments with no true
25 security or collateral underlying the notes. Pinnacle never owned property, and merely held option
26 agreements that never materialized into final purchase contracts, or entered into purchase agreements
27 that never closed escrow. Over the period of the offering, Pinnacle lost numerous real estate projects
28 that were listed as purported "security" and "collateral" for its promissory notes.

1 15. Brake also used false and misleading marketing brochures to encourage new and
2 existing investors to make investments in, or increase their investments in, the Pinnacle notes. The
3 brochures provided details about the properties that Pinnacle was purporting to develop and implied
4 falsely that Pinnacle owned the land underlying each proposed development. Brake caused these
5 misleading marketing brochures to be prepared and disseminated to current and prospective investors
6 through the mails and hand delivery.

7 16. As Pinnacle's principal, Brake knew that Pinnacle did not hold title to the properties
8 and did not have assets that could be used as collateral if default occurred.

9 17. Brake knew or was reckless in not knowing that the materials he disseminated to
10 investors were false and misleading.

11 **C. Brake Misappropriated Millions of Dollars of Investor Funds for His Own Use**

12 18. Brake never maintained a personal checking account, and instead, used the Pinnacle
13 bank accounts as though they were his personal slush funds. Over at least the period 2001 through
14 2005, Brake made undisclosed withdrawals of millions of dollars of investor funds from the Pinnacle
15 accounts to pay for, among other things, lavish shopping sprees, private jet travel, a personal
16 chauffeur, a beachfront home rental in Carmel, California, several Mercedes Benz automobiles,
17 jewelry, and expensive hotel stays.

18 19. Between March 2001 and December 2004 alone, he spent at least \$5 million of
19 investor funds on lavish personal expenses. The \$5 million figure does not include substantial cash
20 withdrawals.

21 20. Pinnacle was constantly in need of funding, and, as a result of Brake's lavish
22 spending, Pinnacle consistently missed required option payments on its real estate projects or was
23 unable to pay legitimate project-related expenses.

24 21. Brake was not entitled to use investor funds to pay for personal expenses. Brake also
25 lied about his spending to Boucher in an apparent attempt to cover up his misappropriation. For
26 example, Brake falsely claimed that he did not pay for his private jet travel with investor funds.
27 Pinnacle's bank records, however, demonstrate that Brake spent investor money to pay for his jet
28 travel.

1 courses of business which operated or would operate as a fraud or deceit upon other persons,
2 including purchasers and sellers of securities.

3 29. By reason of the foregoing, Brake has violated and, unless restrained and enjoined,
4 will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17
5 C.F.R. §§ 240.10b-5] thereunder.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Commission respectfully requests that the Court:

8 I.

9 Preliminarily and permanently enjoin defendant Brake from directly or indirectly violating
10 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Exchange Act [15
11 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

12 II.

13 Order defendant Brake to disgorge all ill-gotten gains according to proof, plus prejudgment
14 interest.

15 III.

16 Order defendant Brake to pay civil money penalties pursuant to Section 20(d)(1) of the
17 Securities Act [15 U.S.C. § 77t(d)(1)], and Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

18 IV.

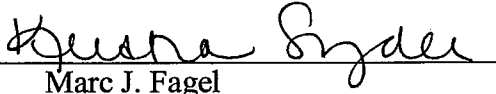
19 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
20 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
21 may be entered, or to entertain any suitable application or motion for additional relief within the
22 jurisdiction of this Court.

V.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: August 27, 2008

Respectfully submitted:

By: 
Marc J. Fagel
John S. Yun
Kristin A. Snyder


Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

DEMAND FOR JURY TRIAL

The Commission hereby demands a jury trial of its claims in this case.

Dated: August 27, 2008

Respectfully submitted:

By: 
Marc J. Fagel
John S. Yun
Kristin A. Snyder

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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